

June 9, 2017

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Broadband-Enabled Health Care Solutions -- GN Docket No. 16-46;
Rural Health Care Support Mechanism -- WC Docket No. 02-60;
Federal-State Joint Board on Universal Service -- CC Docket No. 96-45

Dear Ms. Dortch:

Alaska Communications,¹ by its undersigned counsel, hereby requests that this letter be included in the above-captioned dockets for consideration by the Commission as it prepares to address the universal service contribution factor for the third quarter of 2017 ("3Q17"),² the budget for the Rural Health Care ("RHC") support mechanism, related questions concerning demand that exceeds the budget, and proposals to improve access to and adoption of broadband by health care providers in underserved areas. The purpose of this letter is to bring to the Commission's attention an acute crisis in the management of its universal service programs.

The Commission has diligently worked to craft universal service programs that meet the Nation's evolving needs for access to advanced services at affordable rates. However, recent FCC actions demonstrate that a secondary goal, shrinking the contribution factor, may be taking precedence over the Communications Act's mandate to increase access to universal service – a policy shift that already is threatening the goals of the RHC program. Recent decisions by USAC and the FCC, reducing by 7.5 percent the funding for approved RHC projects, have put rural health care providers ("HCPs") in an untenable position, leaving them incapable of paying for services ordered, and leaving service providers uncertain of recovering their expenses.

¹ In these comments, "Alaska Communications" signifies the affiliates of Alaska Communications Systems Group, Inc. that provide communications services to health care providers in Alaska, including the company's four incumbent local exchange carriers ("ILECs"), ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC, as well as ACS Long Distance, LLC and ACS Internet, LLC.

² The Commission provides 14 days' notice in advance of the next quarter's contribution factor, which takes effect automatically if the Commission takes no action. 47 C.F.R. §54.709(a)(3).

Unlike the schools and libraries (“E-rate”) program, or the low-income program, the RHC program lacks any built-in adjustments for inflation or safeguards so that excess funds can be used only for RHC purposes. USAC has recommended and the FCC is now considering a proposal to further harm the RHC program by using RHC program reserves to temporarily reduce the contribution rate rather than support real needs for rural health care. Rural consumers, a high proportion of whom are low-income consumers, will directly suffer from this policy shift.

The purpose of this letter is to propose a concrete solution to the urgent need for more RHC funding, without increasing the contribution factor. If the Commission considers all of its universal service-related policies in a comprehensive manner, it will recognize this opportunity to significantly improve upon the current RHC program without diminishing other programs or deviating from other FCC goals. Specifically:

- The demand for support for broadband-enabled services for RHC providers is great – it exceeds available funding through the existing RHC mechanism – and the Commission should resolve to take immediate steps to address that demand, not force RHC providers to curtail services.
- The correct solution is within the Commission’s grasp, drawing on existing programs, including the RHC program as well as the low-income, high-cost and E-rate mechanisms, to adopt an appropriate increase to the RHC budget and keep pace with demand going forward.
- The Commission need not raise the contribution factor to achieve a larger RHC budget, but it should not borrow from the RHC reserve or the High-Cost Account (“HCA”) to temporarily lower the contribution mechanism either. Instead, the Commission should take action now to target accumulated reserves for which no prior commitment exists, to redirect much-needed broadband support to the RHC program, rather than allowing USAC to make temporary reductions to contributions that ultimately will not serve the public interest.

RHC Demand. Alaska Communications on many occasions has documented the great demand for RHC support, as well as the public benefits that have come from such support, in rural and remote areas of Alaska. RHC providers have gained a better understanding of the benefits of broadband for improved patient care, while new HIPAA requirements, cloud-based tools, interactive services, and other advancements have dramatically escalated the bandwidth demands of RHC providers since the creation of the program. Indeed, Alaska RHC providers received over \$40 million in support in Funding Year (“FY”) 2016, and requests for FY 2017 (which begins July 1, 2017) are expected to exceed this amount.³ Other stakeholders have

³ See, e.g., *Actions to Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies*, Comments of Alaska Communications, GN Docket No. 16-46 (filed May 24, 2017) (“Alaska Communications May 24 Comments”) at 7-8.

commented about the challenges of providing adequate and affordable health care in rural and remote parts of Alaska, the benefits of the RHC program for reducing costs and improving outcomes, and the urgent demand for additional broadband (last-mile and middle-mile) facilities in Alaska so that care can continue to be improved.⁴ Alaska Native and American Indian people are especially dependent upon the services of RHC providers, through the Alaska Tribal Health System.⁵ A large percentage of RHC customers are low-income individuals and families that historically have been “medically underserved.”⁶

In FY 2015, demand for support from the RHC program reached a new high of \$377.64 million. For FY 2016, the FCC anticipated that demand might exceed the \$400 million annual budget (which, unlike some of the other programs, also must cover USAC administrative costs) and established three filing windows.⁷ Funding requests filed in the September 1 to November 30, 2016 window exceeded the program’s budget, causing USAC to apply *pro-rata* reductions to all those funding requests.⁸

Rural HCPs have filed numerous comments concerning service reductions that may be necessary as a result of these *pro-rata* cuts. For example, Katherine Gottlieb wrote that, due to demand exceeding the funding cap for FY 2016, the Southcentral Foundation expects to experience a shortfall of \$625,000, for which it had no opportunity to plan, and which could force it to cut programs and personnel.⁹ Just as access to broadband-based services is critical for

⁴ *E.g.*, Letter from Nancy Merriman, Alaska Primary Care Ass’n, to FCC Chairman Pai *et al.*, WC Docket No. 02-60, GN Docket No. 16-46 (filed May 24, 2017); Letter from Victor Joseph, Tanana Chiefs Conference, to FCC Chairman Pai *et al.*, WC Docket No. 02-60, GN Docket No. 16-46 (filed May 19, 2017); Letter from LaTesia Guinn, Bethel Family Clinic, to FCC Chairman Pai *et al.*, WC Docket No. 02-60, GN Docket No. 16-46 (filed May 1, 2017); Letter from Albert Wall, Peninsula Community Health Services of Alaska, to Senator Murkowski, Senator Sullivan & Congressman Young (dated Nov. 8, 2016, filed in CC Docket No. 02-60 on Jan. 9, 2017) (citing correspondence from Colette Reahl, MD, Kenai Medical); Letter from Bess Clark, Community Connections, to Senator Murkowski, Senator Sullivan & Congressman Young (dated Nov. 29, 2016, filed in CC Docket No. 02-6 on Jan. 9, 2017).

⁵ Letter from Jaylene Peterson-Nyren, Kenaitze Indian Tribe, to FCC Chairman Pai *et al.*, WC Docket No. 02-60, GN Docket No. 16-46 (filed May 24, 2017); Letter from Katherine Gottlieb, Southcentral Found., to FCC Chairman Pai *et al.*, WC Docket No. 02-60, GN Docket No. 16-46 (filed May 23, 2017).

⁶ See Letter from Colleen Meiman, Nat’l Ass’n of Community Health Centers, to FCC Chairman Pai *et al.*, WC Docket No. 02-60, GN Docket No. 16-46 (filed May 22, 2017).

⁷ *Wireline Competition Bureau Provides a Filing Window Period Schedule for Funding Requests Under the Telecommunications Program and the Healthcare Connect Fund*, Public Notice, WC Docket No. 02-60, DA 16-979 (WCB rel. Aug. 26, 2017).

⁸ 47 C.F.R. §54.675(f).

⁹ Letter from Katherine Gottlieb, Southcentral Found., *supra* (filed May 23, 2017). See also Letter from Victor Joseph, Tanana Chiefs Conference, *supra* (filed May 19, 2017) (FY2016 demand exceeding RHC program budget will cost RHP \$387,680.61 in additional broadband expense).

HCPs in rural and remote parts of Alaska, it must be available at affordable and predictable prices, as so many service providers are dependent upon federal grants and other public sources of funding and cannot simply raise their rates or otherwise generate additional revenue to pay for broadband when universal service funds unexpectedly fall short. It is therefore urgent that the Commission take immediate steps to address the shortfalls now being caused by the 20-year-old \$400 million cap on the RHC program.

High-Cost Account Reserves. Many HCPs and others advocate raising the annual budget for the RHC program. Alaska Communications believes the demand justifies an increase from \$400 to \$800 million. If the budget had been annually adjusted for inflation, that change alone would put today's program at about \$600 million, and the demand clearly justifies an even more substantial increase.¹⁰ The Commission would not need to raise the contribution factor to achieve this necessary increase, however. Several of the Commission's programs have been running below the level of collection by USAC, resulting in a HCA with hundreds of millions of dollars in reserve. Putting aside amounts for which USAC has made commitments, there are ample reserves that could be accessed for an expansion of the RHC program. For example:

- The RHC program itself has as much as \$480 million in reserve that could be immediately accessed for an increase in the fund;
- The E-rate program has a reserve of roughly \$5 billion, some of which could be repurposed for RHC support;
- The high-cost program has between \$100 and \$150 million per year in uncommitted funds; and
- Lifeline demand has fallen precipitously – the current run rate is more than \$900 million below the annual budget of \$2.25 billion – which may create funds that could be repurposed for RHC support, at least until demand returns to previously forecasted levels.

Recent submissions from USAC confirm the existence of these amounts. Pursuant to the *USF-ICC Transformation Order*, USAC forecasts annual demand for the high-cost program as no less than the budgeted \$4.5 billion (\$1.125 billion per quarter), regardless of whether demand falls below the budgeted amount.¹¹ This resulted in the created of a Connect America Fund reserve account, now called the High Cost Account ("HCA"). USAC recently projected that this account would amount to nearly \$1.9 billion as of the end of the second quarter 2017 ("2Q17").¹² Following the adoption of the Alternative Connect America Cost Model ("A-CAM") and funding elections by rate-of-return carriers, it appears that nearly all of that amount will be used to support increased high-cost funding for those companies over a ten-year period.¹³

¹⁰ Alaska Communications May 24 Comments at 6-8.

¹¹ *Connect America Fund, et al.*, 26 FCC Rcd 17663, ¶560 (2011).

¹² Universal Service Administrative Company, "Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2017," (filed Feb. 1, 2017) ("USAC 2Q17 Report").

¹³ *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually In Alternative Connect America Cost Model Support to Expand Rural*

Nevertheless, Alaska Communications believes that roughly \$147 million per year will remain uncommitted after accounting for A-CAM support.¹⁴ As discussed below, certain FCC rules and policies could alter the trajectory of the HCA, but these can and should be carefully reviewed by the Commission so that the HCA reserve is used for maximum public benefit.

The RHC program similarly appears to have a large cash reserve of roughly \$480 million, according to USAC's 2Q17 report.¹⁵ It is possible that some of this amount is committed for projects approved but not yet completed. However, it also is worth considering whether USAC could, with Commission approval if necessary, use some of this amount to restore funding denied in FY 2016 when it became clear that demand exceeded the cap.¹⁶ Moreover, if sufficient amounts remain uncommitted, this reserve could permit the Commission to raise the cap going forward.

The E-rate program, with a current budget of \$3.99 billion, also has carried forward unused funds since at least 2002, which by FCC rule are to be used for disbursement to schools and libraries in future funding years.¹⁷ The total cash balance is roughly \$5 billion, although some of this amount may be committed,¹⁸ as may be the case with RHC support. While the E-rate reserve amount appears to be limited by FCC rule to the E-rate program, USAC has not used all of the reserve, and the FCC has the ability to revise its rules to put those funds to work in the RHC program. Even one percent of this amount, \$50 million, would make a material difference to HCPs caught by the RHC program shortfall in FY 2016.

Lastly, demand for the low-income support program currently is running at about \$1.32 billion (based on 3Q17 projections), which is roughly \$930 million below the annual budget of

Broadband, Public Notice, WC Docket No. 10-90, DA 17-99 (WCB rel. Jan. 24, 2017) (“January 2017 PN”).

¹⁴ This is based on the projected annual demand (based on 2Q17 values) of the four high-cost support funds: rate-of-return carrier support (\$1.995 billion), price cap support (\$1.75 billion), mobility fund (\$483 million), and “Alaska plan” support (\$120 million).

¹⁵ USAC 2Q17 Report.

¹⁶ See *supra* note 7. These cuts, coming after projects were approved and budgeted, left HCPs without options to incorporate changes in their infrastructure plans or secure alternative funding. See *supra* notes 4-6.

¹⁷ *Schools and Libraries Universal Service Mechanism*, First Report & Order, FCC 02-175, ¶14 (rel. June 13, 2002). See 47 C.F.R. §54.507.

¹⁸ The Wireline Competition Bureau recently observed that USAC reported \$1.2 billion in previously collected but unused funds were available for E-rate use in FY 2017. *Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests*, Public Notice, CC Docket No. 02-6, DA 17-507 (WCB rel. May 24, 2017), citing USAC, “Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2017” (filed May 23, 2017), at 54.

\$2.25 billion for that program.¹⁹ Repurposing unused low-income support for RHC support makes especially good policy sense, because the support would be helping to fund services that are heavily relied upon by low-income consumers.²⁰

These funding sources are not theoretical – they represent cash on hand that either could be put to immediate productive use to bridge the RHC support gap or will continue to lie idle, becoming less valuable over time.

Contributions. The existence of cash reserves such as the HCA, RHC and E-rate cash balances should not be mistaken as an opportunity to lower the contribution rate. In the first place, the Commission’s obligation to ensure that support is specific, predictable and sufficient is a statutory one; the Commission must ensure that, through that support, access to advanced telecommunications and information services is being provided in all regions of the Nation.²¹ The goal of minimizing the burden of contributions to universal service to the extent feasible, while laudable, is not one that can take prominence over these core statutory universal service principles.²² The available reserves should be put to good and necessary use toward RHC broadband rather than being diverted for a temporary reduction in the contribution mechanism. Failure to fully fund RHC causes material harm to the public and puts the Commission in a position of shirking its statutory mandate.

Secondly, recent attempts by USAC and the Commission to lower the contribution rate using reserve funds, rather than using those funds for the purpose for which they were collected – furthering access to advanced telecommunications and information services in unserved areas of the Nation – have had a *de minimis* impact on the contribution factor.²³ As a very recent example, between May 23 and June 2, without explanation, USAC changed its recommendation

¹⁹ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, 31 FCC Rcd 3962 (2016), at ¶ 400

²⁰ See, e.g., Letter from Colleen Meiman, Nat’l Ass’n of Community Health Centers, *supra* (filed May 22, 2017) (RHC services in Alaska predominantly serve low-income individuals and families).

²¹ 47 U.S.C. §254(b).

²² The Communications Act requires that contributions be equitable and non-discriminatory, not that they be minimized. See *id.*

²³ For example, in June 2016 the Wireline Competition Bureau directed USAC to fund E-rate Category 1 and 2 projects with as much as \$1.9 billion in unused funds from previous years, leading to a lower contribution requirement. *Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests*, Public Notice, CC Docket No. 02-6, 31 FCC Rcd 6751 (WCB 2016). The same logic was repeated in May 2017 and USAC was instructed to tap into as much as \$1.2 billion in previously collected funds. See note 15, *supra*. In footnote 12 of the *January 2017 PN*, the Bureau suggested, somewhat ambiguously, that beginning 1Q18 USAC should use HCA reserves to lower the contribution requirement, rather than raise contributions to cover the increased support for A-CAM recipients, pursuant to 47 C.F.R. §54.709(b), absent FCC action. See *supra* note 13.

to the Commission for funding the RHC program, shifting the entire amount be funded for 3Q17 (the budgeted amount of \$100 million for the quarter) from contributions to the RHC reserve – again, this is presumably an attempt at lowering the contribution line item.²⁴ Whereas failure to properly fund the RHC program has a significant deleterious effect on the delivery of rural health care, it has only a negligible effect on the overall industry through the contribution factor. It is troubling that the Commission might inadvertently cede a golden opportunity to improve broadband access for rural HCPs in exchange for a merely cosmetic change to the contribution line item.²⁵

Third, while USAC stated that the *June 2 Fund Size Projection* was filed “in accordance with Section 54.709 of the [Commission’s] rules,”²⁶ it plainly was not. Section 54.709(a)(3) of the Commission’s rules requires USAC to file its demand projections for all four of the universal service support mechanisms (high-cost, low-income, RHC and E-rate) with the Commission at least 60 days before the start of each calendar quarter.²⁷ Because the June 2 filing is egregiously late, the Commission should not rely on it in setting a new contribution factor.

Conclusion. In the past, the FCC considered collections in excess of demand to provide an opportunity for future growth in critical universal service programs. Alaska Communications respectfully submits that the Commission is in danger of reversing this policy for short-term reductions in the line item but missing a far more important opportunity to address long-term needs in rural America. Alaska Communications urges the Commission to take immediate action, review its policies in a comprehensive fashion, and address the RHC support shortfall. If the Commission will redirect existing reserves toward meeting the demand for RHC, and raise the RHC budget going forward, the agency can better achieve its statutory goals and improve the effectiveness and efficiency of all its programs.

²⁴ Compare Universal Service Administrative Company, “Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2017” (filed June 2, 2017) (“*USAC June 2 Fund Size Projection*”), to Universal Service Administrative Company, “Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2017” (filed May 23, 2017), available at:

<http://www.usac.org/about/tools/fcc/filings/2017/q3/USAC%203Q2017%20Federal%20Universal%20Service%20Mechanism%20Quarterly%20Demand%20Filing.pdf>.

²⁵ For example. Alaska Communications estimates that the decisions in recent quarters to draw from the reserves rather than maintain the contribution factor, *see supra* note 23, in each case had an impact of merely a fraction of one percent on the contribution factor.

²⁶ *June 2 Fund Size Projection* at 2.

²⁷ 47 C.F.R. § 54.709(a)(3).

Marlene H. Dortch, Secretary

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Please direct any questions concerning this matter to me.

Respectfully submitted,



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Counsel to Alaska Communications Systems

cc: Jay Schwarz, Office of Chairman Pai
Amy Bender, Office of Commissioner O'Rielly
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